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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. GREGORY HENRY WYRICK, Defendant and Appellant.	C080443 (Super. Ct. No. 14F05864)

A jury found defendant Gregory Henry Wyrick guilty of repeatedly molesting H. when she was six or seven and J. when she was five while babysitting them. H. was the daughter of defendant's girlfriend's sister. J. was the daughter of a family friend. The molestation of J. came to light when J.'s mother and an educator both (separately) saw J. engaged in sexually inappropriate behavior (e.g., J. "humping" one of her stuffed animals at home and gyrating on the floor of her classroom with her legs open). The molestation of H. came to light when H. told her therapist she had been molested.

Defendant testified he had never molested H. or J. The girls lied because their mothers, who were mad at him, put them up to it. The cousin of defendant's girlfriend (who was H.'s guardian for a time) testified she saw H. at a birthday party "play[ing] with [defendant], hug[ging] on him, kiss[ing] on him." H. asked her to take her to defendant's house. Defendant's girlfriend saw J. around defendant, and the two of them had a "[v]ery good" relationship. J. never seemed to be afraid of him.

Dr. Blake Carmichael is a psychologist at U.C. Davis Children's Hospital who specializes in child sexual abuse. He testified child sexual abuse accommodation syndrome is an educational tool used to help dispel myths about what people commonly believe about children who have been sexually abused. He said child sexual abuse victims do not necessarily display hate or fear of their abusers, especially when they have a relationship with the abusers. The victims sometimes engage in sexualized behavior or acting out in other ways. He had never met J. or H. or reviewed any of the reports in this case. His role at trial was not to give an opinion as to whether any child had been sexually abused.

The trial court sentenced defendant to 150 years to life in prison. On appeal, defendant raises two contentions regarding instructions and one regarding the abstract of judgment. We agree only that the abstract of judgment needs to be corrected and affirm.

DISCUSSION

I

The Trial Court Properly Instructed With CALCRIM No. 1193 Regarding Child Sexual Abuse Accommodation Syndrome

Defendant contends the trial court erred in giving CALCRIM No. 1193 because the instruction allowed jurors to consider child sexual abuse accommodation syndrome evidence for the improper purpose of determining whether J.'s and H.'s allegations were true.

The instruction told the jury as follows: "You have heard from Dr. Blake Carmichael regarding Child Sexual Abuse Accommodation Syndrome. [¶] This testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not the named victims' conduct was not inconsistent with the conduct of someone who has not been molested, *and in evaluating the believability of her testimony*." (Italics added.)

Defendant takes issue with the italicized part of the instruction, arguing the instruction "invites the jury to apply the expert's testimony case-specifically to evaluate the believability of an alleged victim who testified at trial." There was nothing wrong with this instruction, as case law and the evidence here make clear. Our Supreme Court has noted that child sexual abuse accommodation syndrome evidence is relevant and admissible to "rehabilitate [a] witness's credibility when the defendant suggests that the child's conduct after the incident . . . is inconsistent with his or her testimony claiming molestation." (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300.) The words believability and credibility are synonymous. (Black's Law Dict. (9th ed. 2009) p. 423, [defining "credibility" as "[t]he quality that makes something (as a witness or some evidence) worthy of belief"].) Moreover, the expert here explicitly acknowledged that he had neither met J. or H. nor reviewed any of the reports in this case. Thus, the jurors would have understood this instruction to correctly allow them to use the child sexual abuse accommodation syndrome evidence to understand seemingly counterintuitive behavior when evaluating the victims' believability (i.e., credibility), something allowed under the law.

II

The Trial Court Properly Instructed With CALCRIM No. 1190 Regarding Testimony By One Witness In A Sexual Assault Case

The trial court gave two instructions stating a single witness can prove any fact. The first was CALCRIM No. 301, which stated, "the testimony of only one witness can prove any fact." The second (at issue here) was CALCRIM No. 1190, which is specifically tailored for use in cases involving a sex offense. As given here, CALCRIM No. 1190 stated as follows: "Conviction of a sexual assault crime may be based on the testimony of a complaining witness alone." Defendant contends the court erred in giving CALCRIM No. 1190 "because this is a pinpoint instruction on a topic covered by a neutral instruction." (Bolding and capitalization omitted.)

We must reject defendant's contention because of the California Supreme Court's decision in *People v. Gammage* (1992) 2 Cal.4th 693. There the trial court instructed the jury pursuant to CALJIC Nos. 2.27 and 10.21, the respective predecessors to CALCRIM Nos. 301 and 1190. (*Gammage*, at pp. 696-697.) Considered separately, both instructions correctly state the law. (*Id*. at p. 700.) And while the instructions "overlap to some extent" (*ibid*.), if the court were to instruct only pursuant to CALCRIM No. 1190, the jury would be instructed that a complaining witness's testimony need not be corroborated, leaving the question of whether the testimony of a noncomplaining witness needs corroboration to establish facts testified to by that witness. Nor must the court instruct only in terms of CALCRIM No. 301. "Neither [instruction] eviscerates or modifies the other." (*Gammage*, at p. 701.) In fact, "[t]he instructions in combination are no less correct, and no less fair to both sides, than either is individually." (*Ibid*.) We are bound by this precedent. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

III

The Abstract Of Judgment Must Be Corrected

Defendant contends the abstract of judgment must be modified to delete the "x" next to box 5 (which indicates "LIFE WITH THE POSSIBILITY OF PAROLE on counts 1-12"). We agree (as do the People) because defendant was sentenced on counts 1 to 12 to indeterminate terms of 15 or 25 years to life.

We do not agree with defendant, however, that there is an error on the same page of the abstract because it fails to reflect that sentences on certain counts were stayed. Those stays are properly reflected on the "attachment page" to the abstract of judgment where there is a box for that purpose, stating "654 STAY," which is correctly marked with an "x."

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment that deletes the "x" next to box 5 (which states "LIFE WITH THE POSSIBILITY OF PAROLE on counts 1-12"). The clerk is directed to forward certified copies of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

/s/
Robie, Acting P. J.

We concur:

/s/
Duarte, J.

/s/
Hoch, J.